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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,176	09/10/2001	Colin T Mallett	36-1483	9581
23117	7590	01/10/2005	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			BATORAY, ALICIA	
			ART UNIT	PAPER NUMBER
			2155	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/936,176	MALLETT ET AL.
	Examiner Alicia Baturay	Art Unit 2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 September 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10 September 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 - 2) Certified copies of the priority documents have been received in Application No. 09/936,176.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10272004</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-12 are pending.

Specification

2. The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper. Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973).

Claim Objections

3. Claim 12 is objected to because of the following informalities: it is written in an outline format (a), b), etc.), and should be written in sentence form. Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-8, 10 and 12 are rejected under 35 U.S.C. 102(e) as being unpatentable over

Miloslavsky et al. (U.S. 2003/0021259)

6. A network terminating unit (NTU) for receiving digital data via a communications link comprising a signaling channel and one or more data channel(s), the signaling channel being operable to establish and control connections between the NTU and one or more data sources via the communications link so that data can be transferred from the or each data source to the NTU via one or more of the data channel(s) (Miloslavsky, page 3, paragraph 47), the NTU being operable to detect messages transmitted on the signaling channel that contain data of a predetermined type, to extract the data and to store the data for passing to a first destination device (Miloslavsky, page 21, paragraph 241).
7. As to claim 2, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to send data received from the destination device to further destination devices using messages transmitted on the signaling channel (Miloslavsky, page 21, paragraph 258).
8. As to claim 3, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU in which the communications link is provided via Integrated Services Digital Network (ISDN) equipment (Miloslavsky, page 3, paragraph 47).

9. As to claim 4, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU in which the data of a predetermined type represents a part or a whole of one or more e-mail message(s) or other textual message(s) (Miloslavsky, page 21, paragraph 241).
10. As to claim 5, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU in which the data of a predetermined type represents a software download, database search results, news information or telemetry data (Miloslavsky, page 21, paragraph 244).
11. As to claim 6, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to detect whether the first destination device is active so as to be able to receive the data and, if the device is active, to transmit the data stored by the NTU to the device (Miloslavsky, page 21, paragraph 257).
12. As to claim 7, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to send data received from the destination device to further destination devices using messages transmitted on the signaling channel (Miloslavsky, page 21, paragraph 258).
13. As to claim 8, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to detect signaling messages indicating

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the set up of a connection to a predetermined destination device and in response to such detection to transmit the data stored by the NTU to the predetermined destination device (Miloslavsky, page 21, paragraphs 257-258). Logging on to a system is akin to setting up a session or connection.

14. As to claim 10, Miloslavsky discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to send and/or receive the data of a predetermined type during a predetermined time interval (Miloslavsky, page 22, paragraph 260).

15. As to claim 12, Miloslavsky discloses the invention substantially as described in claim 4, including an NTU further comprising means operable to: firstly establishing the number of messages to be transmitted to a destination device and transmitting data representing the number (Miloslavsky, page 22, paragraph 260); secondly identifying the sender of each message to be transmitted to the destination device and transmitting data representing each sender (Miloslavsky, page 21, paragraph 242); thirdly, transmitting data representing the text of each message to the destination device (Miloslavsky, page 21, paragraph 258). If a certain number of messages is reached, the router holds the messages normally transmitted to the server and sends an indication (data representing this number) of this overload to the server so that the server can take appropriate action.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 9 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Miloslavsky and further in view of Kessler et al. ("ISDN : Concepts, Facilities, and Services").

18. As to claim 9, Miloslavsky discloses the use of an ISDN communications link (Miloslavsky, page 3, paragraph 47). But Miloslavsky does not expressly disclose to send and/or receive the data of when signaling channeling activity is within a range. However, Kessler does teach an NTU further comprising means operable to monitor the activity of the signaling channel and to send and/or receive the data of a predetermined type when the signaling channel activity is within a predetermined range (Kessler, page 42, paragraph 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Miloslavsky and Kessler in order to describe in greater detail the services available on an ISDN line (Kessler, page 4, paragraph 2).

19. As to claim 11, Kessler discloses the invention substantially as described in claim 1, including an NTU further comprising means operable to estimate the time for transmitting data to a destination via the signaling channel, and, if the time exceeds a predetermined

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threshold, to transmit the data to the destination using one or more of the data channels (Kessler, page 87, paragraph 6).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Baturay whose telephone number is (571) 272-3981. The examiner can normally be reached at 7:30am - 5pm, Monday - Thursday, and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (571) 272-3978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB

M. Alam
HOSAIN ALAM
SUPERVISORY PATENT EXAMINER